

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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|--|---|---------------------|
| DEVIN SMITH | : | CIVIL ACTION |
| | : | |
| v. | : | |
| | : | |
| SUPERINTENDANT LOUIS FOLINO, et al. | : | NO. 12-6695 |

ORDER

AND NOW, this 16th day of December, 2013, upon careful and independent consideration of the petition for a writ of habeas corpus (Doc. No. 1-2), review of the Report and Recommendation of United States Magistrate Judge Jacob P. Hart (Doc. No. 6), and Petitioner’s pro se “Objections to the Magistrate Judges [sic] Report and Recommendation” (Doc. No. 7), it is hereby **ORDERED** that:

1. Petitioner’s Objections to the Report and Recommendation are **OVERRULED**.¹
2. The Report and Recommendation is **APPROVED** and **ADOPTED**.
3. The petition for a writ of habeas corpus is **DISMISSED** with prejudice.
4. There is no probable cause to issue a certificate of appealability.
5. The Clerk of Court shall mark this case **CLOSED** for statistical purposes.

¹ We note that Petitioner’s Objections attempted to assert that his conviction was against the weight of the evidence and that trial counsel was ineffective, although these claims were not presented in the original habeas petition. Because Petitioner did not present these claims before Magistrate Judge Hart in his original petition, we will not consider them here. See Clemons v. Harlow, 2012 WL 3104393, at *1 (E.D. Pa. July 30, 2012) (declining to consider arguments the petitioner raised for the first time in objections to the R&R); Kirk v. Meyer, 279 F. Supp. 2d 617, 619 (E.D. Pa. 2003) (“the vast majority of authority holds that a district court may properly refuse to hear claims not first presented to the assigned Magistrate Judge . . . because ‘[t]he purpose of the Magistrates Act would be frustrated[.]’”) (citations omitted)). With regard to the remaining arguments presented in Petitioner’s Objections, we adopt the reasoning presented in Judge Hart’s Report and Recommendation.

BY THE COURT:

/s/ Mitchell S. Goldberg

MITCHELL S. GOLDBERG, J.